

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NOS. 533 & 536 OF 2016****WRIT PETITION NO. 533 OF 2016**

1. Shri Madhav A. Sahakari,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
2. Shri Vithoba D. Dessai,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
3. Shri Shrikant P. Naik,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
4. Shri Dhananjay N. Dessai,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
5. Shri Naresh Dharma Malik,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
6. Shri Gurudas Keshav Parab,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.

7. Shri Shivanand Pednekar,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
 8. Shri Rajendra Y. Sawal,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
 9. Shri Ulhas P. Sinari,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.
- Petitioners

V e r s u s

1. Assistant Registrar of Co-operative
Societies, South Zone, Margao,
Department of Co-operation,
Government of Goa, Margao,
Salcete Goa.
2. Registrar of Co-operative Societies,
Department of Co-operation,
Government of Goa,
Sahakar Sankul, Panaji Goa.
3. The Goa State Co-operative
Milk Producers Union Ltd.,
a registered co-operative society
through its Managing Director,
Dr. N. C. Sawant, major of age,
having office at Curti, Ponda Goa
4. Shri Baburao S. Fatto Dessai,
major of age, Indian National,

Chairman, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.

5. Shri Madhavrao S. Dessai,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.

6. Shri Vijaykant V. Gaonkar,
major of age, Indian National,
Director, The Goa State Co-op.
Milk Producers Union Ltd.,
Curti, Ponda Goa.

.... Respondents

Mr. A. F. Diniz and Mr. R. Menezes, Advocates for the petitioners.

Mr. S. R. Rivonkar, Advocate for the respondent nos.4, 5 and 6.

Mr. D. Lawande, Government Advocate for the respondent nos. 1 and 2.

Mr. I. Agha, Advocate for the respondent no.3.

WITH

WRIT PETITION NO. 536 OF 2016

1. Shri Francis Fernandes,
s/o Damiao Francis Fernandes,
age 48 years, Indian National,
r/o H.No.1605/A,
Orda, Candolim, Bardez Goa.

2. Shri Francis D'Souza,
s/o Roldao D'Souza,
age 43 years,
r/o H.No.1020, Fursa Wado,
Zuari, Goa Velha Goa.

..... Petitioners

V e r s u s

1. State of Goa,
through Chief Secretary,
Secretariat,
Porvorim Goa 403 521
 2. The Registrar,
Office of the Registrar of
Co-operative Societies,
4th/5th Floor, Sahakar Sankul,
Patto, Panaji Goa 403 001.
 3. The Assistant Registrar of
Co-operative Societies,
Sahakar Bhavan, 1st Floor,
Opp. Panjim Municipal Market,
Panaji Goa. 403 001
 4. Shri Casmiro Araujo,
Senior Auditor/Inspector,
Office of Assistant Registrar
of Co-operative Societies,
Sahakar Bhavan, 1st Floor,
Opp. Panjim Municipal Market,
Panaji Goa 403 001
 5. Shri Chandu N. Raikar,
Junior Auditor/Inspector,
Office of Assistant Registrar
of Co-operative Societies,
Sahakar Bhavan, 1st Floor,
Opp. Panjim Municipal Market,
Panaji Goa 403001.
 6. Menino Alfonso
C/o The Mandovi Fishermen Marketing
Co-operative Society,
Malim Jetty, Malim, Betim,
Bardez Goa.
- Respondents

Mr. Carlos Alvares Ferreira, Advocate for the petitioners.

Mr. P. Faldessai, Addl. Government Advocate for the respondent nos. 1 to 3.

Mr. P. Chawdikar, Advocate for the respondent no.6.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 20th June, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. A. F. Diniz, learned counsel appearing for the petitioners, Mr. S. R. Rivonkar, learned counsel appearing for the respondent nos. 4, 5 and 6 and Mr. I. Agha, learned counsel appearing for the respondent no.3 in Writ Petition No.533 of 2016 and Mr. C. A. Ferreira, learned counsel appearing for the petitioners, Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent nos. 1 to 3 and Mr. P. Chawdikar, learned counsel appearing for the respondent no.6.

2. Both the above petitions were taken up together as it was pointed out by the learned counsel appearing for the respective parties that the issues involved in both the petitions are similar and as such both

the petitions can be conveniently disposed of together.

3. Rule. Heard forthwith with the consent of the learned counsel appearing for the respective parties.

4. The learned counsel appearing for the respective respondents waive service.

5. The above petitions take exception to the orders dated 18.05.2016 passed by the respondent no.1 in Writ Petition No. 533 of 2016 and 10.05.2016 passed by the respondent no.3 in Writ Petition No. 536 of 2016 as the Presiding Officer appointed to examine the No Confidence Motion moved by the petitioners against the Chairman of the concerned society. The parties shall be referred to in the manner they so appear in the cause title of Writ Petition No.533 of 2016.

6. Before we proceed to examine the issues raised by the petitioners on merits, Mr. Rivonkar, learned counsel appearing for the respondent nos. 4, 5 and 6 in Writ Petition No. 533 of 2016 has raised a preliminary objection inter-alia contending that the petitioners have an alternate remedy to challenge the impugned order and as such this Court

should not exercise its extra ordinary jurisdiction under Article 226 of the Constitution of India. It is pointed out that the impugned order passed by the respondent no.1 is in terms of Section 59A of the Goa Co-operative Societies Act, 2001 which is amenable to an appeal in terms of Section 114A of the said Act. The learned counsel has also pointed out that in terms of Section 59A of the said Act, No Confidence Motion can be moved by the members but any order passed thereon can be challenged under Section 114A of the said Act. It is further submitted that in the present case the respondent no.1 was delegated with the powers of the Registrar as he was appointed under Section 59A(4) of the said Act. It is further pointed out that the respondent no.1 is justified to pass the impugned order and according to him in view of the judgment of the Apex Court reported in **(2015) 8 SCC 1** in the case of **Vipulbhai M. Chaudhary V/s Gujarat Cooperative Milk Marketing Federation Limited and others**, a No Confidence Motion cannot be moved before two years from the date of the election of the Chairman of the Board. The learned counsel also pointed out that in the present petitions as the subject No Confidence Motion was moved within a period of one year, by itself would show that no such motion could be moved by the petitioners. The learned counsel further pointed out that

as the respondent no.1 has exercised its powers based on the delegation of powers by the Registrar such order has to be construed to be under Section 59A of the said Act which is amenable to an appeal under Section 114A of the said Act. The learned counsel thereafter has extensively taken us through the observations of the Apex Court in the said judgment in the case of **Vipulbhai M. Chaudhary** (supra) to point out that it is categorically held therein that no such No Confidence Motion can be moved within a period of two years. The learned counsel further pointed out that the directions issued by the Apex Court should be considered to be under Article 141 of the Constitution of India which the respondent no.1 is bound to follow in terms of Article 144 of the Constitution. The learned counsel as such points out that on this ground alone the petition deserves to be rejected. The learned counsel however points out that even on merits the respondent no.1 was justified to follow the judgment of the Apex Court in case of **Vipulbhai M. Chaudhary** (supra) and suspend the meeting called to move the No Confidence Motion moved by the petitioners.

7. On the other hand, Mr. A. F. Diniz, learned counsel appearing for the petitioners in Writ Petition No. 533 of 2016 has

pointed out that the impugned order is without jurisdiction as the respondent no.1 has no powers to pass such order. The learned counsel has thereafter taken us through the provisions of Section 59A(3) of the said Act to point out that the Registrar had already passed an order in terms thereof inter-alia directing that the No Confidence Motion moved by the petitioners be considered at the special meeting of the Board which was fixed on a specified date. The said order further reads that the respondent no.1 was only authorised to preside over such meeting. The learned counsel thereafter has taken us through the provisions of Section 59 A(4) of the said Act to point out that the respondent no.1 was only appointed as a Presiding Officer and no powers were delegated on the respondent no.1 of the Registrar. The learned counsel as such submits that there was no delegation of powers in favour of the respondent no.1 by the Registrar and as such according to him the impugned order is without any jurisdiction which calls for interference of this Court under Article 226 of the Constitution of India. The learned counsel further pointed out that once the No Confidence Motion is under consideration, there is no power to adjourn such meeting in terms of Section 59A (5) of the said Act.

8. Mr C. A. Ferreira, learned counsel appearing for the petitioners in WP No. 536 of 2016 has adopted the submissions of Mr. A. F. Diniz, learned counsel appearing for the petitioners in WP No. 533 of 2016.

9. Mr. D. Lawande, learned Government Advocate appearing for the respondent nos. 1 and 2 has pointed out that the respondent no.1 was only authorised to preside over the meeting in terms of Section 59A(4) of the said Act. The learned Government Advocate further pointed out that there was no delegation of powers by the Registrar in favour of the respondent no.1.

10. Mr. Chawdikar, learned counsel appearing for the respondent no. 6 in WP No. 536 of 2016 submits that he adopts the submissions of Mr. Rivonkar, learned counsel appearing for the respondent nos. 4, 5 and 6 in WP No. 533 of 2016.

11. Mr. I. Agha, learned counsel appearing for the respondent no.3 in Writ Petition No. 533 of 2016 has pointed out that in case the Court passes any order, the interest of the concerned society should be

protected during the interregnum period to carry out the day-to-day affairs of such society.

12. We have considered the submissions of the learned counsel and we have also gone through the records. On perusal of the notice dated 05.05.2016 we find that the Registrar had convened the meeting to consider the No Confidence Motion moved by the petitioners and authorised the respondent no.1 to preside over such meeting. The agenda of the meeting was duly notified to consider the motion of No Confidence against the Chairman-respondent no.4. It is not disputed that the respondent no.4 has not raised any objection nor challenged the said order passed by the Registrar. The said order was in fact passed under Section 59A (3) of the said Act.

13. Section 59A(4) of the said Act reads thus :

“**59A(4)** The special meeting called under sub-section (3) shall be presided over by the Registrar or any person authorized by him in this behalf. The Registrar or such person shall, when presiding over the meeting of the board of directors/committee, have the same powers as the President or Chairman when

presiding over a board of directors’/
/committee’s meeting has, but shall not have
the right to vote.”

14. On plain reading of the said provisions, it clearly points out that the respondent no.1 was only authorised to preside over the subject meeting and there was no delegation of powers by the Registrar in favour of the respondent no.1 as contended by Mr. Rivonkar, learned counsel appearing for the respondent nos. 4, 5 and 6. The respondent no.1 who was appointed as the Presiding Officer has only powers reserved to a President or Chairman while presiding over the Board of Directors'/committee's meeting. In such circumstances, the contention of the learned counsel appearing for the respondent nos. 4, 5 and 6 that the respondent no.1 could examine whether the No Confidence Motion moved by the petitioners itself is in accordance with law cannot be accepted. Hence, in such circumstances, the exercise carried out by the respondent no.1 is in excess of its jurisdiction which cannot be sustained and deserves to be quashed and set aside. On plain reading of the relevant provisions of the Co-operative Societies Act, the respondent no.1 had no jurisdiction to pass such order to proceed to examine the validity or otherwise of the No Confidence Motion moved by the

petitioners when a decision with that regard was already taken by the respondent no.2 whilst convening the special meeting. In such circumstances, the impugned order is without jurisdiction and as such, we find that there is no reason to refuse to interfere with such order in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India. The impugned orders passed by the respondent no.1 cannot be read into Section 59A(3) of the said Act to consider the contention of Mr. Rivonkar that such orders are amenable to an appeal under Section 114 of the said Act.

15. In any event, on perusal of the point for determination as framed by the Apex Court at para 1 of the said Judgment in the case of **Vipulbhai M. Chaudhary** (supra), it clearly covers a situation where the Act is silent with regard to matter concerning moving of a No Confidence Motion. In the present case, Mr. Rivonkar, learned counsel appearing for the respondent nos. 4, 5 and 6 does not dispute that the procedure is clearly laid down of the manner in which such No Confidence Motion can be considered and moved. But however, this aspect would have to be considered by an appropriate authority on its own merits in accordance with law.

16. In view of the above, we find that the impugned orders passed by the respondent no.1 in WP No. 533 of 2016 and the respondent no.3 in WP No 536 of 2016 cannot be sustained and deserve to be quashed and set aside. It was brought to our notice that the learned Vacation Judge of this Court by an order dated 31.05.2016 and 01.06.2016 had worked out an interim arrangement with regard to the day-to-day working of the affairs of the concerned societies. In the peculiar facts and circumstances of the case and taking note of the view we propose to take in the matter, we find that such interim orders passed by this Court on 31.05.2016 and 01.06.2016 dealing with the modalities of functions on the day-to-day affairs of the concerned societies should continue to be in operation until the No Confidence Motion moved by the petitioners is considered in accordance with law.

17. In view of the above, we pass the following order :

ORDER

- (i) The impugned orders dated 18.05.2016 and 10.05.2016 passed by the respondent no.1 in WP No. 533 of 2016 and the respondent no.3 in WP No. 536 of 2016 are quashed and set aside.

(ii) The interim arrangement in the orders dated 31.05.2016 and 01.06.2016 to run the day-to-day affairs of the concerned society shall continue to be in operation and shall automatically stand vacated after the No Confidence Motion is considered by the Board in accordance with law.

(iii) Needless to say that the Registrar shall fix a fresh date for consideration of the No Confidence Motion moved by the petitioners and complete such exercise as expeditiously as possible in any event within three weeks from today.

(iv) Rule is made absolute in the above terms.

(v) Both the petitions stand disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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